



RCE \$ 1761 ZW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Ralf SCHWEINFURTH et al.

Confirmation No.: 7747

Serial No.: 09/743,758

Examiner: Nina Bhat

Filed: January 16, 2001

Group Art Unit: 1761

Title: COLORATION WITH PEARLY LUSTER PIGMENTS IN THE FOOD AND PHARMACEUTICAL SECTORS

**INFORMATION DISCLOSURE STATEMENT
UNDER 37 C.F.R. §§ 1.56, 1.97 AND 1.98**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This information disclosure statement is made in accordance with 37 C.F.R. §§ 1.56, 1.97 and 1.98 as follows:

TIMING AND FEES

- ☒ Under 37 C.F.R. § 1.97(b), no fee or statement is required for filing this information disclosure statement is filed:
- ☐ within three months of the filing date of a national application other than a CPA under § 1.53(d);
 - ☐ within three months of the actual filing date of the national phase of a PCT application; OR
 - ☒ before the mailing of a first substantive office action (including after filing of an RCE).
- ☐ Under 37 C.F.R. § 1.97(c), this information disclosure statement is filed after the periods specified in 37 C.F.R. § 1.97(b), but before the mailing date of:
- ☐ a final rejection under 37 C.F.R. § 1.113;
 - ☐ termination of prosecution, e.g. Ex Parte Quayle, M.P.E.P § 609(B)(2); OR
 - ☐ a notice of allowance under 37 C.F.R. § 1.311; and

is accompanied by:

- ☐ the statement as specified in 37 C.F.R. § 1.97(e) set out below; OR
- ☐ a check covering the fee of \$180.00 under 37 C.F.R. § 1.17(p).
- ☐ Under 37 C.F.R. § 1.97(d), this information disclosure statement is filed after the mailing date of the following actions which have not been withdrawn:
 - ☐ a final action under 37 C.F.R. § 1.113;
 - ☐ termination of prosecution, e.g. Ex Parte Quayle, M.P.E.P § 609(B)(2); OR
 - ☐ a notice of allowance under 37 C.F.R. § 1.311;

AND is filed on or before payment of the issue fee; AND is accompanied by:

- ☐ the statement as specified in 37 C.F.R. § 1.97(e) as set forth below, and the fee of \$180.00 under 37 C.F.R. § 1.17(p).

STATEMENTS UNDER 37 C.F.R. 1.97(e)

- ☐ Each item of information contained in this information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application having a mailing date not more than three months prior to the filing date of this information disclosure statement; or
- ☐ No item of information contained in this information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and to the knowledge of the undersigned attorney after making reasonable inquiry, no item of information contained in this information disclosure statement was known to any individual designated in 37 C.F.R. § 1.56(c) more than three months prior to the filing date of the information disclosure statement.

CITED MATERIALS

- ☐ Copies of materials listed but not attached were cited in benefit (35 U.S.C. § 120) ancestor application Serial No. _____, on Form 892 by the Examiner and/or Form 1449 by the applicant; see 37 C.F.R. § 1.98(d).
- ☐ Copies of materials listed but not attached were cited in an international search report dated _____.
- ☒ Copies of the materials listed are attached (except for the foregoing).

NON-ENGLISH LANGUAGE REFERENCES

- ☐ An English-language search report or equivalent paper from a foreign patent office is provided indicating the relevance of the cited reference(s).
- ☐ A foreign-language search report from a foreign patent office is provided, and pertinent parts are translated substantively below:

- X = document of particular relevance when it is taken alone
- Y = document of particular relevance when it is combined with another such document
- A = document defining the general state of the art
- O = non-written disclosure
- P = intercalated document
- T = document cited to understand the theory or principle underlying the invention
- E = patent document which has the benefit of a date earlier than the filing date and which was published only on or after this filing date
- D = cited in the application
- L = cited for another reason
- & = publication of member of same patent family

☐ Translation of other relevant information on foreign search report

None

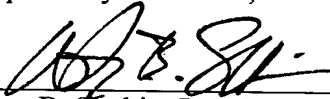
OTHER INFORMATION

Instead of the German language documents cited in the European Opposition US 6,488,756 B1 is provided in place of EP 0960911 B1, US 5,858,078 is provided in place of WO 97/43346, US 6,773,499 B2 is provided in place of WO 99/61529, and Australian Patent AU 199950336 B2 is provided in place of EP 1 094 721 B1.

PAYMENT OF FEES DUE (IF ANY):

- ☐ A check for \$_____ covering the fee identified above is attached.
- ☐ Please charge to Deposit Account No. 13-3402 \$_____ for the fee identified above.
- ☒ The Commissioner is hereby authorized to charge or credit any overpayment to Deposit Account No. 13-3402, two copies of this paper are attached for this purpose.

Respectfully submitted,


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Attorney Docket No.: MERCK-2192

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PTO/SB/08A (08-00)

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Substitute for form 1449A/PTO

INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(use as many sheets as necessary)

Sheet 1 of 1

Complete if Known

Application Number	09/743,758
Filing Date	January 16, 2001
First Named Inventor	Ralf SCHWEINFURTH et al.
Group Art Unit	1761
Examiner Name	Nina Bhat
Attorney Docket Number	MERCK-2192

U.S. PATENT DOCUMENTS

Examiner Initials *	Cite No. ¹	U.S. Patent Document		Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document MM-DD-YYYY
		Number	Kind Code ² (if known)		
	A1	6,773,499		Schoen et al.	08-10-2004
	A2	5,858,078		Andes et al.	01-12-1999
	A3	6,488,756		Schoen et al.	12-03-2002

FOREIGN PATENT DOCUMENTS

Examiner Initials *	Cite No. ¹	Foreign Patent Document			Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document MM-DD-YYYY	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T ⁶
		Office ³	Number ⁴	Kind Code ⁵ (if known)				
	B1	WO	98/56261		The University of British Columbia	12-17-1998		
	B2	AU	199950336	B2	MERCK Patent GmbH	02-07-2000		

NON PATENT LITERATURE DOCUMENTS

Examiner Initials *	Cite No. ¹	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T ²
	C1	Notice of Opposition to a European Patent, February 3, 2005.	
	C2	Letter to Angela Evans, dated April 21, 1998, and accompanying documents.	
	C3	QC Test Procedures, MERCK KGaA, July 1996,	
	C4	Commission Directive 95/45/EC of 26 July 1995 laying down specific purity criteria concerning colours for use in foodstuffs.	
	C5	European Parliament and Council Directive No. 95/2/EC of 20 February 1995 on food additives other than colours and sweeteners.	
	C6	Bernard, Bruce K. et al., Toxicology and Carcinogenesis Studies of Dietary Titanium Dioxide-Coated MICA in Male and Female Fischer 344 Rats, Journal of Toxicology and Environmental Health, 29:417-429, 1990.	
	C7	European Parliament and Council Directive 94/36/EC of 30 June 1994 on colours for use in foodstuffs.	
	C8	Candurin product brochures of August 1996.	

Examiner
Signature

Date
Considered

* EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

¹ Unique citation designation number. ² See attached Kinds of U.S. Patent Documents. ³ Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). ⁴ For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. ⁵ Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST. 18 if possible. ⁶ Applicant is to place a check mark here if English language translation is attached. Number refers to English language corresponding family member.